

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CANDACE SMITH,

Plaintiff,

v.

FRESNO STATE UNIVERSITY, et al.,

Defendant.

Case No. 1:25-cv-00329-KES-BAM

FINDINGS AND RECOMMENDATIONS  
REGARDING DISMISSAL OF ACTION FOR  
FAILURE TO PROSECUTE

(Doc. 3)

**FOURTEEN-DAY DEADLINE**

**I. Background**

Plaintiff Candace Smith (“Plaintiff”), proceeding *pro se* and *in forma pauperis*, initiated this civil action on March 18, 2025. (Docs. 1, 2.) On March 21, 2025, the Court granted Plaintiff’s motion to proceed *in forma pauperis* and noted that the Court would screen Plaintiff’s complaint in due course. The Court’s order was returned as undeliverable on March 31, 2025.

**II. Discussion**

Plaintiff is required to keep the Court apprised of her current address at all times. Local Rule 183(b) provides:

**Address Changes.** A party appearing in propria persona shall keep the Court and opposing parties advised as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within thirty (30) days

1 thereafter of a current address, the Court may dismiss the action without prejudice  
2 for failure to prosecute.

3 Federal Rule of Civil Procedure 41(b) also provides for dismissal of an action for failure to  
4 prosecute.<sup>1</sup>

5 Plaintiff's address change was due no later than April 30, 2025. Plaintiff has failed to file  
6 a change of address or otherwise update the Court.

7 "In determining whether to dismiss an action for lack of prosecution, the district court is  
8 required to weigh several factors: (1) the public's interest in expeditious resolution of litigation;  
9 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
10 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
11 sanctions." *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks and  
12 citation omitted); *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217,  
13 1226 (9th Cir. 2006). These factors guide a court in deciding what to do, and are not conditions  
14 that must be met in order for a court to take action. *In re PPA*, 460 F.3d at 1226 (citation  
15 omitted).

16 Given Plaintiff's failure to respond to this Court's orders, the expeditious resolution of  
17 litigation and the Court's need to manage its docket weigh in favor of dismissal. *Id.* at 1227. The  
18 third factor, risk of prejudice to the defendant, also weighs in favor of dismissal, as a presumption  
19 of injury arises from the occurrence of unreasonable delay in prosecuting an action. *Anderson v.*  
20 *Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against dismissal  
21 because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643  
22 (9th Cir. 2002). However, "this factor lends little support to a party whose responsibility it is to  
23 move a case toward disposition on the merits but whose conduct impedes progress in that  
24 direction," which is the case here. *In re PPA*, 460 F.3d at 1228 (citation omitted). More  
25 importantly, given the Court's apparent inability to communicate with Plaintiff, there are no other  
26 reasonable alternatives available to address Plaintiff's failure to prosecute this action and her

27  
28 <sup>1</sup> Courts may dismiss actions sua sponte under Rule 41(b) based on the plaintiff's failure to prosecute.  
*Hells Canyon Pres. Council v. U. S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (citation omitted).

1 failure to apprise the Court of her current address. *Id.* at 1228–29; *Carey*, 856 F.2d at 1441. The  
2 Court will therefore recommend that this action be dismissed based on Plaintiff’s failure to  
3 prosecute this action.

4 **III. Conclusion and Recommendation**

5 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed based on  
6 Plaintiff’s failure to prosecute. Fed. R. Civ. P. 41(b); L.R. 183(b).

7 These Findings and Recommendations will be submitted to the United States District  
8 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
9 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may  
10 file written objections with the court. The document should be captioned “Objections to  
11 Magistrate Judge’s Findings and Recommendations.” **Objections, if any, shall not exceed**  
12 **fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page**  
13 **number if already in the record before the Court. Any pages filed in excess of the 15-page**  
14 **limit may not be considered.** Plaintiff is advised that failure to file objections within the  
15 specified time may result in the waiver of the “right to challenge the magistrate’s factual  
16 findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter*  
17 *v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

18  
19 IT IS SO ORDERED.

20 Dated: May 7, 2025

21 /s/ Barbara A. McAuliffe  
22 UNITED STATES MAGISTRATE JUDGE  
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